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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re KELLY M., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JAMES M. et al.,

Defendants and Appellants.

D053968

(Super. Ct. No. EJ2258F)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M.
Bubis, Judge. Affirmed.

Mother, T.D., and presumed father, James M., appeal the judgment terminating
their parental rights to their daughter, Kelly M., contending the juvenile court erred by

declining to apply the beneficial relationship exception (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)).¹ We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

In December 2006 the San Diego County Health and Human Services Agency (the Agency) filed a dependency case for 10-month-old Kelly because she was exposed to James's violence toward T.D. and James was also violent with Kelly's older half siblings. T.D. and James concealed Kelly's whereabouts until April 2007 when the child abduction unit of the San Diego District Attorney's Office found her. Kelly was detained in Polinsky Children's Center until the next day, when she was moved to the home of her paternal aunt and de facto parent, Eileen B. The detention with Eileen became a placement and Kelly remains with Eileen who wants to adopt her. The section 366.26 hearing took place in October 2008.

THE BENEFICIAL RELATIONSHIP EXCEPTION

Section 366.26, subdivision (c)(1) allows termination of parental rights upon clear and convincing evidence of adoptability. An exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's

¹ All statutory references are to the Welfare and Institutions Code.

custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs. . . ." (*Id.* at p. 576.) Examining the evidence in the light most favorable to the judgment, we note that T.D. maintained regular visitation and James, for the most part, also maintained regular visitation. Both failed, however, to meet their burden of showing a beneficial relationship. (*Id.* at pp. 576-577; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1372.)

At the time of the section 366.26 hearing, Kelly was two years nine months old. She had been out of T.D.'s and James's custody for more than one and one-half years and had lived with Eileen for all of that time. Kelly was bonded to Eileen and her husband, called them "mommy" and "daddy," and was flourishing in their care. Kelly was overcoming the trauma she had experienced with T.D. and James and had improved dramatically in her ability to seek comfort and affection. Kelly seemed to enjoy visits with T.D. and was comfortable with her. Kelly did not appear to have a strong connection to T.D., however, and did not display distress when they parted. Kelly was more affectionate with James but did not display distress when they parted. Kelly ran to hug Eileen when visits ended.

T.D. has a long history of drug addiction, Child Protective Service (CPS) involvement, and criminal convictions. James has a history of CPS referrals, drug use, and violence. He did not comply with his case plan and continued to be violent and use drugs. T.D. made little progress in the domestic violence component of her plan. She and James continued to see each other in violation of restraining orders. They never achieved unsupervised visitation and did not attend the section 366.26 hearing. Kelly

needed the stability, security, and consistency of the adoptive home Eileen offered. The court did not err by declining to apply the beneficial relationship exception.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

McINTYRE, J.